

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

**WRIT PETITION NO.6624 OF 2004
ALONG WITH
CIVIL APPLICATION NO.2300 OF 2005**

K.M. Radhakrishnan).. Petitioner

Versus

Mrs.Inraji Passi and others).. Respondents

Mr.K.K.V. Kurup for the Petitioner.

Mr.S.U. Pandey for the Respondents.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 11TH OCTOBER 2005

P.C.:

. This Petition challenges the judgment and order of the Appellate Court which has decreed the Suit. The Appellate Court has reversed the findings of the trial Court which had dismissed the Suit. The Appellate Court has found on evidence that arrears of rent had not been paid by the Petitioner and also that he was not lawful sub-tenant of the suit premises. The Appellate Court, in my view, has rightly found that there was no documentary evidence on record nor is there any material to indicate that the tenancy agreement between the original Defendant-tenant and the Plaintiff had been created sometime in 1960 as contended by the Petitioner. In fact, there is a finding that the tenancy was created

only in 1975. There is also no pleading in the Written Statement filed by the original tenant to state that the tenancy had been created in 1960 as contended by the Petitioner. Apart from this, the Appellate Court has found that the Petitioner, who was the second Defendant before the trial Court, was not able to prove that he was residing in the suit premises either as a member of the family of the original tenant or as a lawful sub-tenant prior to 1974. In my view, this is a finding of fact which need not be disturbed. In any event, the decree has already been executed on 5th September 2005. Writ Petition rejected.

2. The Respondent shall not part with the possession of the suit premises for a period of two weeks from today, on the application of the learned Advocate for the Petitioner.

3. In view of the rejection of the Writ Petition, nothing survives in Civil Application No.2300 of 2005 and the same is disposed of accordingly.